

Message Text

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ACTION L-02

INFO OCT-01 EUR-12 IO-10 ISO-00 SSO-00 NSCE-00 USIE-00

INRE-00 CIAE-00 DODE-00 PM-03 H-01 INR-07 NSAE-00

NSC-05 PA-01 RSC-01 PRS-01 SP-02 SS-15 ACDA-05 CU-02

SAM-01 TRSE-00 SAJ-01 OIC-02 OES-03 EPA-01 CEQ-01

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FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 257

INFO AMBMESSEY BONN 4386

AMEMBASSY BRUSSELS

AMEMBASSY THE HAGUE

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY OTTAWA

AMEMBASSY PARIS

AMEMBASSY ROME

USMISSION NATO

C O N F I D E N T I A L GENEVA 495

E.O. 11652: GDS

TAGS: CSCE PFOR XG

SUBJ: CSCE: POSSIBLE US LEGAL DIFFICULTIES

REFS: A) GENEVA 0389; B) STATE 13704

1. SUMMARY. SPECIAL NATO CUACUS JAN 28 ON THIS TOPIC WAS
ATTENDED BY ALL HEADS OF MAJOR NATO DELEGATIONS WHO WERE
IN TOWN AT THE TIME, MOST ACCOMPANIED BY A NUMEROUS STAFF.
THIS INDICATES BOTH THE IMPORTANCE ALLIES ATTACH TO THIS
ISSUE AND THEIR DESIRE TO BE HELPFUL TO US.
HOWEVER, THERE WAS NO REPEAT NO SUPPORT FOR SPECIFIC APPROACH
TO THE PROBLEM SUGGESTED REF B, AND ALL WHO SPOKE TO THE
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ISSUE ASKED US TO CONSIDER OTHER SOLUTIONS. WE DOUBT,

MOREOVER, THAT ANY OF THE SEVERAL ALTERNATIVE APPROACHES SUGGESTED BY THE ALLIES ARE WISE OR PRACTICAL. THIS MESSAGE SUMMARIZES THE DISCUSSIONS DURING THE NATO CAUCUS; FOLLOWING SEPTTEL CONTAINS US DEL RECOMMENDATIONS FOR NEXT STEPS. END SUMMARY.

2. ALL NATO DELS WHO ADDRESSED THIS ISSUE DURING JAN. 28 MEETING (INCLUDING FRG, FRANCE, UK AND ITALY) ARGUED AGAINST DEPARTMENTS PREFERRED APPROACH (COORDINATING COMMITTEE RESOLUTION OR CHAIRMAN'S STATEMENT TO AFFECT THAT CSCE TEXTS CONSTITUTE MORAL OBLIGATIONS BUT ARE NOT LEGALLY BINDING ON PARTICIPANTS) AND URGED US TO SEEK OTHER WAYS OUT OF OUR LEGAL DIFFICULTIES. WE HAD OF COURSE ALREADY FULLY SET OUT US VIEWS IN PRECEDING NATO CAUCUS (REF A), AND THIS MEETING WAS ARRANGED TO GIVE ALLIES CHANCE TO MAKE A CONSIDERED RESPONSE. WHILE WE REPEATEDLY REITERATED CONSIDERATIONS IN FAVOR OF OUR PROPOSAL DURING JAN 28 DISCUSSIONS ALL OF OUR INTERLOCUTORS (EXCEPT CANADA) WERE SPEAKING FROM INSTRUCTIONS AND WERE NOT IN POSITION TO BE SWAYED BY FURTHER ARGUMENT.

3. ALL WHO SPOKE TO ISSUE (INCLUDING ALL ALLIED DELS WHO PLAY ACTIVE ROLE HERE) SAID THEIR GOVERNMENTS WOULD REGARD CSCE TEXTS AS POLITICAL DOCUMENTS AND NOT REPEAT NOT LEGALLY BINDING INSTRUMENTS. HOWEVER, THEIR PROBLEM WITH THE US PROPOSAL- STATED OR IMPLIED DURING MEETING AND IN PRIVATE CONVERSATIONS ON FRINGES OF IT--IS THAT THEIR GOVERNMENTS ARE RELUCTANT TO GO ON RECORD IN AN OFFICIAL STATEMENT THAT WOULD APPEAR TO DOWNPLAY THE IMPORTANCE OF THE CSCE RESULTS. (MANY ALSO EXPRESSED OPINION, PROBABLY CORRECT, THAT EVEN IF NATO ALLIES AGREED TO COORDINATING COMMITTEE ACTION ALONG LINES WE RECOMMEND, PROPOSAL WOULD BE NON-NEGOTIABLE WITH SOVIETS GIVEN THEIR DESIRE TO PORTRAY CSCE AS "HISTORIC" EVENT.) BEHIND THESE ALLIED CONCERNS LIES THE ASSUMPTION, UNDOUBTEDLY ACCURATE, THAT COORDINATING COMMITTEE ACTION OF SORT WE PROPOSE WOULD QUICKLY LEAK TO THE MEDIA.

4. IN OTHER WORDS, WHILE OUR ALLIES RECOGNIZE THAT THIS
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PARTICULAR EMPEROR HAS NO CLOTHES, THEY DON'T WANT TO BE CAUGHT SAYING NO MORE OR LESS PUBLICLY. WE SEE SOME LOGIC IN THEIR CONCERNS. IT WOULD SEEM INCONGRUOUS, ON THE ONE HAND, TO ENVISAGE POSSIBILITY THAT CSCE RESULTS MAY JUSTIFY SUMMIT LEVEL MEETING WHILE AGREEING, ON THE OTHER HAND, TO AN OFFICIAL STATEMENT THAT ANY JOURNALIST OR PARLIAMENTARIAN WOULD READ TO MEAN THAT CSCE DOCUMENTS HAVE LITTLE PRACTICAL IMPORTANCE.

5. SEVERAL ALLIES SUGGESTED ALTERNATIVE APPROACHES TO PROBLEM, ALL OF WHICH WOULD ENTAIL RESOLVING IT ESSENTIALLY IN CONTEXT OF THIRD REPEAT THIRD STAGE. DESPITE OUR STATEMENT, EARLY IN JAN 28 DISCUSSIONS, THAT UNILATERAL US DISCLAIMER AT STAGE III WAS NON-STARTER, SEVERAL ALLIED REPS, OBVIOUSLY SPEAKING FROM INSTRUCTIONS, ENDORSED EARLIER UK PROPOSAL TO THAT EFFECT AND URGED US TO CONSIDER IT.

6. OTHERS (INCLUDING FRG, UK FRANCE AND ITALY) SUGGESTED WE SHOULD TRY TO MEEET OUR PROBLEM THROUGH INSERTION OF APPROPRIATE LANGUAGE IN CSCE FINAL ACT, WHICH ALLIES SEE AS CAPPING ALL OF THE INDIVIDUAL CSCE TEXTS. ALLIES SUGGESTED THE LANGUAGE IN QUESTION SHOULD BE POSITIVELY AND NOT NEGATIVELY WORDED AND FRENCH AMBASSADOR ANDRE (WHO HAS REPLACED ANDREANI HERE) OFFERED FOLLOWING ILLUSTRATIVE FORMULA ON PERSONAL BASIS: "PARTICIPATING STATES HASVE APPROVED (THE ATTACHED DOCUMENTS, RESOLUTIONS OR WHATEVER) WHICH CONFORM WITH THEIR POLITICAL INTENTIONS".

7. FINALLY, CANADIAN DEL SUGGESTED INSERTION IN FINAL ACT OF "A FEDERAL STATE CLAUSE" AND OFFERED, ON ILLUS-TRATIVE BASIS, TWO ALTERNATIVE FORMULAS FOR SUCH A CLAUSE. ONE WOULD READ: "STATES WHOSE CONSTITUTIONS PROVIDE FOR TWO OR MORE LEVELS OF AUTHORITY WILL ENCOURAGE THE IMPLEMENTATION OF THE PROVISIONS OF THE FINAL DOCUMENTS BY THE COMPETENT AUTHORITIES". SECOND WOULD READ: "STATES IN WHICH CONSTITUTIONAL RESPONSIBILITY FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE FINAL DOCUMENTS IS SHARED IN WHOLE OR IN PART WILL ENCOURAGE THEIR COMPONENT AUTHORITES TO EXCERCISE THEIR CONSTITUTIONAL RESPONSIBILITIES IN CONFIDENTIAL

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THE LIGHT OF THEIR PROVISIONS."

8. US DEL DOES NOT REPEAT NOT BELIEVE ANY OF THESE SOLUTIONS ARE PRACTICAL. IN FIRST PLACE, THE SOVIETS, SO FAR AS WE AWARE, HAVE NOT YET AGREED THAT CSCE TEXTS SHOULD BE LUMPED TOGETHER UNDER A SINGLE FINAL ACT AND MAY WELL PREFER SEPARATE APPROVAL AND SIGNATURES OF INDIVIDUAL DOCUMENTS-- PERHAPS ONE SOCUMENT FOR EACH AGENDA ITEM, PLUS THE MEDITERRANEAN DECLARATION. EVEN IF THEY EVENTUALLY AGREED TO A FINAL ACT, SOVIETS WILL WANT ITS LANGUAGE TO BE CONSONANT WITH THE SYMBOLISM OF HISTORIC ACHIEVEMENT THEY BELIEVE SOULD EMANATE FROM STAGE III. THEIR PREFERRED LANGUAGE WOULD THUS BE MORE LIKELY TO COMPOUND THAN TO RESOLVE OUR LEGAL

DIFFICULTIES. MOREOVER, WHATEVER THEIR ATTITUDES NOW,
WE CANNOT BE CERTAIN THAT THE ALLIES WOULD STRONGLY
SUPPORT LANGUAGE MEETING SPECIFIC US LEGAL PROBLEM WHEN
THE DRAFTING OF THE FINAL ACT ACUTALLY GETS UNDER WYA.
FINALLY, GENEVA TALKS LIKELY WILL NOT GET TO THE TEXT
OF THE FINAL ACT UNTIL NEAR THE END OF STAGE II. BY
THAT TIME, MOST OF OUR OTHER OPTIONS WOULD HAVE BEEN
FORECLOSED, AND IF WE FAILED TO GET A SATISFACTORY
FORMULA IN THE FINAL ACT WE WOULD HAVE FEW ALTERNATIVES LEFT. DALE

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